



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703)583-3800  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural and Historic Resources

David K. Paylor  
Director  
(804) 698-4000

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Northern Virginia Baptist Center  
FOR  
Northern Virginia Baptist Center  
Unpermitted Activity  
VWP Non-Permit No. 19-000758**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Northern Virginia Baptist Center, regarding the Northern Virginia Baptist Center Unpermitted Activity VWP Non-Permit No. 19-000758, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
5. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
6. "NVBC" means Northern Virginia Baptist Center, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. NVBC is a "person" within the meaning of Va. Code § 62.1-44.3.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
12. "Site" or "Property" means the property located at 14019 Glenkirk Road, in Gainesville, Prince William County, Virginia, owned by NVBC.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
15. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
16. "Va. Code" means the Code of Virginia (1950), as amended.

17. "VAC" means the Virginia Administrative Code.
18. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. NVBC owns the Property located in Prince William County, Virginia. The Property contains the Northern Virginia Baptist Center, a community center used for a variety of activities year-round.
2. DEQ staff conducted inspections of the Site on October 18 and 29, 2019. The initial inspection was conducted in response to a public complaint received by DEQ.
3. DEQ staff identified the filling of state surface waters at the Site. Based on DEQ field observations and use of aerial photography and other mapping tools, the surface water impacts from filling totaled 0.87 acre of palustrine emergent wetland, and 135 linear feet of stream channels.
4. DEQ issued Site inspection report to NVBC dated October 18, 2019, and requested removal of the fill material from state surface waters and restoration of the impacts. DEQ did not receive a response from NVBC.
5. DEQ issued Site inspection report to NVBC on November 7, 2019 for the follow-up Site inspection conducted on October 29, 2020. DEQ again requested removal of the fill material from state surface waters and restoration of the impacts. DEQ did not receive a response from NVBC.
6. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director. NVBC does not have a Permit for the fill activities observed by DEQ staff during inspections of the Site.
7. On November 26, 2019, DEQ issued a Notice of Violation (NOV No. 1910-001203) to NVBC for the noncompliance described above. DEQ did not initially receive a reply to the NOV as requested.
8. DEQ spoke to a representative of NVBC via phone on January 3, 2020, and spoke informally with representatives of NVBC in person, at NRO, on January 6, 2020.
9. NVBC stated that it was unaware that its actions were violations, and explained that it was simply trying to alleviate a driveway flooding issue that had started occurring on a regular basis following work that was completed on the adjacent road and associated

storm water control/retention features. DEQ explained that the actions still were considered violations because they resulted in impacts to state surface waters that were not permitted.

10. Based on the results of the October 18 and 29, 2019, inspections of the Site, associated review of DEQ files, the January 3 and 6, 2020, correspondence with representatives of NVBC, and associated correspondence and files, the Board concludes that NVBC has violated Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 for unauthorized impacts to surface waters as described above in paragraphs C(1) through C(9).

11. On May 28, 2021, as requested by DEQ, representatives of NVBC submitted a proposed corrective action plan (CAP) to DEQ for review. DEQ staff provided comments on the proposed CAP on June 11, 2021, and representatives of NVBC submitted a revised CAP to DEQ on June 17, 2021. DEQ approved the CAP via an email response date June 24, 2021.

The CAP proposes to remove the fill from impacted wetland areas and to restore and monitor those areas. The CAP identified a total of 0.53 acre of wetland impacts based on field survey measurements, a change from DEQ's original estimate of 0.87 acre. No corrective actions were deemed necessary for the impacts to 135 linear feet of stream channel, as it was observed that the impacts had been temporary in nature and the stream and soils and been restored naturally.

12. In order for NVBC to return to compliance, DEQ staff and representatives of NVBC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders NVBC, and NVBC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$19,337.50** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

NVBC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, NVBC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of NVBC for good cause shown by NVBC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1910-001203 dated November 26, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, NVBC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NVBC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NVBC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by NVBC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NVBC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war,

strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. NVBC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NVBC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NVBC.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after NVBC has completed all of the requirements of the Order;
  - b. NVBC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NVBC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NVBC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

Consent Order

Northern Virginia Baptist Center; Unpermitted Activity VWP Non-Permit No. 19-000758

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Northern Virginia Baptist Center voluntarily agrees to the issuance of this Order.

Date: August 17, 2021 By: DR JAMES KELLY, Trustee Chairman  
(Person) (Title)  
Northern Virginia Baptist Center

Commonwealth of Virginia

City/County of Prince William

The foregoing document was signed and acknowledged before me this 17<sup>th</sup> day of August, 2021, by DR JAMES KELLY who is Trustee Chairman of Northern Virginia Baptist Center, on behalf of the corporation.

Catherine Torres  
Notary Public

7596917  
Registration No.

My commission expires: 10-31-2022

Notary seal:



12. Any plans, reports, schedules or specifications attached hereto or submitted by NVBC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NVBC certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind NVBC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NVBC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NVBC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21<sup>st</sup> day of October, 2021.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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## **APPENDIX A SCHEDULE OF COMPLIANCE**

NVBC shall:

1. Comply with the terms of the DEQ-approved Corrective Action Plan (CAP) dated May 28, 2021, revised June 17, 2021.
2. Unless approved by DEQ in writing at a later date, all items required by the CAP, including monitoring of restored areas, reporting of restoration monitoring to DEQ, and the purchase of any applicable compensatory mitigation credits if required in accordance with the CAP, are to be completed no later than December 31, 2023.
3. Unless otherwise specified in this Order, NVBC shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
Attention: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193